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IN THE

Supreme Court of the United States

October Term, 1975

No. 74-1457

SUMITOMO FORESTRY CO., LTD., OF JAPAN,
Petitioner,
v.
THURSTON COUNTY, WASHINGTON,
Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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COMES NOW Sumitomo Forestry Co., Ltd. of Japan, Petitioner herein (hereinafter "Sumitomo"), and pursuant to Rule 24(5) submits this Supplemental Brief.

On May 19, 1975, this Court denied a Petition for a Writ of Certiorari in the case of *Carrington Co. v. Department of Revenue,* 84 Wn.2d 444, P.2d 74, *cert. den.,* 421 U.S. ....., 44 L. Ed. 2d 470 (By order dated May 19, 1975, Supreme Court Cause 74-1238). Sumitomo submitted its

original Petition and Brief on May 20, 1975 and was unaware that the Petition in *Carrington* had been denied. It is respectively submitted that this denial requires that the Petition herein be granted.

The *Carrington* case is the latest decision by the highest court in the State of Washington interpreting Article I, Section 10, Clause 2 of the Constitution. It now stands as the settled law in the State of Washington. The reasoning of the Washington Court and the resulting decision in *Carrington* is directly contrary to the decision of the Ninth Circuit Court of Appeals in the case at bar.

In *Carrington*, the taxpayer sold certain goods and materials to the United States Government. By the terms of the sale, the taxpayer loaded the goods aboard trucks in Seattle and they were transported a distance of approximately thirty miles to Tacoma. At Tacoma, the goods were unloaded and inspected for compliance with specifications. The goods were then packed for shipment and transported to their overseas destination by ocean going vessel or by airplane. The goods were delayed in Tacoma for a period of 7 or 8 days. The Washington Supreme Court held that when the goods were loaded aboard the trucks in Seattle, the export journey began and, further, the packing in Tacoma was not a break in the stream of export, but in furtherance of it.

In the case at bar, the District Court held that the export journey commenced when the logs were put aboard the trucks in the forest and that the accumulation of the logs at the Port was not a break in the export journey, but in furtherance of it. While the District Court did not have the *Carrington* decision before it, the factual and legal

parallels are obvious. The panel of the Ninth Circuit Court of Appeals reversed the District Court in the instant case. The *Carrington* decision was announced two days after the decision by the Ninth Circuit Court of Appeals in the case at bar. However, on Sumitomo's Petition for Rehearing, the obvious conflict between the decision of the State court and the Ninth Circuit Court of Appeals was brought to the attention of the Court but a Rehearing was denied.

The decision of the Ninth Circuit Court of Appeals in the case at bar clearly conflicts with the *Carrington* decision. As in the *Carrington* case, Sumitomo's logs were transported by truck to the Port. As in *Carrington*, the logs were taken to a point where the change in the mode of transportation required an accumulation of the goods. In *Carrington*, the goods were inspected and packed for shipment at the site of the interruption, while Sumitomo's logs had previously been inspected and nothing remained to be done except put the logs aboard ship.

Finally, the *Carrington* decision struck down a tax levied on the domestic seller, while in the case at bar, the taxpayer is the foreign exporter. If *Carrington* was the controlling precedent, the tax on Sumitomo's logs would clearly be unconstitutional.

The original Petition states the grounds upon which this Court may grant review of the Ninth Circuit Court of Appeals decision. It is submitted that the recent refusal to grant certiorari in *Carrington* requires that certiorari be granted in the case at bar. If this Court refuses to grant certiorari in the case at bar, both state and federal courts in the State of Washington would be in the anomalous position of choosing between two irreconcilable decisions

rendered at almost the same time in two distinct jurisdictions. Only confusion can result from such a situation. The Courts must receive some guidance from the Supreme Court of the United States. This Court must grant the Petition in this case and resolve the obvious conflict.

Respectfully submitted,

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